

ARTICLE 14: PROHIBITED PERSONNEL PRACTICES

DEFINITIONS

- 14.1 For the purpose of this Article, and in accordance with Chapter 1, Section 105 of the Act, amended and in accordance with 5 U.S.C. 2302, prohibited personnel practice means any action described in section 14.3 - 14.5.
- 14.2 For the purpose of this Article with respect to an employee in, or applicant for, a covered position in FAS, personnel practice means:
- a. An appointment;
 - b. A promotion;
 - c. An assignment including assignment to any position or salary class;
 - d. An award of performance pay or special differential;
 - e. A within-class salary increase;
 - f. A separation;
 - g. A performance evaluation; and,
 - h. Any decision, recommendation, examination, or ranking that relates to section 14.2a - g.

PRACTICES DEFINED IN THE ACT AND 5 U.S.C. 2302

- 14.3 Any employee who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not with respect to such authority:
- a. Discriminate for or against any employee or applicant for employment on the basis of:
 - 1. race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964;
 - 2. age as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967;
 - 3. sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938;

4. disabling condition, as prohibited under Section 501 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act; and,
 5. sexual orientation, marital status, political or union affiliations, as prohibited under any law, rule, or regulation.
- b. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of an evaluation of the:
 1. work performance, ability, aptitude, or general qualifications of such individual; or,
 2. character, loyalty, or suitability of such individual.
 - c. Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee as a reprisal for the refusal of any person to engage in such political activity;
 - d. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;
 - e. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
 - f. Grant any preference or advantage not authorized by law, rule, or regulation to any employee (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
 - g. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 2302, Section 3110(a)(3)) of such employee if such position is in the Agency in which such employee is serving as a public official (as defined in 5 U.S.C. 2302, Section 3110(a)(2)) or over which such employee exercises jurisdiction or control as such an official;
 - h. Take or fail to take a personnel action with respect to any employee or applicant for employment as reprisal for:

1. disclosures of information by an employee or applicant which the employee or applicant reasonably believes evidences:
 - (a) a violation of any law, rule, or regulation; or,
 - (b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety if such disclosure is not specifically prohibited by law or if such information is not specifically required by Executive Order to be kept secret in the interest of national security or the conduct of foreign affairs; or,
 2. any disclosure to the Special Counsel for the Merit Systems Protection Board, or the Inspector General of an agency or another employee designated by the Head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:
 - (a) violation of any law, rule, or regulation; or,
 - (b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
 - i. Take or fail to take any personnel action against an employee or applicant for employment as reprisal for the exercise of any appeal right granted by any law, rule, or regulation;
 - j. Discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness, any conviction of the employee or applicant for any crime under the laws of any state, the District of Columbia, or the United States; or,
 - k. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.
- 14.4 While it is recognized that threats are not specifically covered as prohibited personnel practices, FAS will not tolerate such practices.

WITHHOLDING INFORMATION

- 14.5 Nothing in section 14.3 above shall be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress.

EQUAL EMPLOYMENT OPPORTUNITY

- 14.6 Nothing in section 14.3 above shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee in the Federal service under:
- a. Section 717 of the Civil Rights Act of 1964, prohibiting discrimination on the basis of race, color, sex, or national origin;
 - b. Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, prohibiting discrimination on the basis of age;
 - c. Under Section 6(d) of the Fair Labor Standards Act of 1938, prohibiting discrimination on the basis of sex;
 - d. Section 501 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, prohibiting discrimination on the basis of disabling condition; or,
 - e. The provisions of any law, rule, or regulation prohibiting discrimination on the basis of sexual orientation, marital status, political or union affiliation.
- 14.7 None of the above precludes any bargaining unit employee from filing a grievance on any matter covered in this Article.

PROHIBITED PERSONNEL PRACTICE COMPLAINTS

- 14.8 Employee affected by a prohibited personnel practice may raise the matter under a statutory procedure or the Foreign Service Grievance Procedure, but not both. In either of these procedures, the employee is entitled to AFSA/FAS representation.